

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 1 November 2022

Public Authority: London Borough of Hillingdon
Address: 3E/04, Civic Centre
High Street
Uxbridge UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested relating to wording in public notices relating to proposal notices for parking management orders.
2. The Commissioner's decision is that London Borough of Hillingdon (LBH) is entitled to cite section 14 (vexatious request) in response to the request.
3. The Commissioner does not require LBH to take any steps as a result of this decision notice.

Request and response

4. On 16 June 2021, the complainant wrote to the Council and requested information in the following terms:

"Please provide the following information under the FOIA

Between the beginning of February 2017 and just prior to changes taking place in April 2017 there was an exchange of communications between officers in the legal department and others within the council relating to wording in public notices relating to proposal notices for parking management orders under The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 to clearly reflect notices of proposal.

This information is not on public record.

Therefore please provide the communications and or documents in electronic or physical form on the subject of public notices covered under the above mentioned regulations between both elected and appointed offices of the London Borough of Hillingdon.

However, to reduce the scope and area or search the exchanges would have possibly occurred between those responsible for publishing notices at that time, the Borough Solicitor, the legal Department Practice Manager, Deputy CEO, Council Cabinet members including the leader and deputy leader.

To be clear I am not seeking affirmation of adherence to the above mentioned regulations but internal communications and documents on the subject.

In the event of failure to disclose in the first instance, please ensure to confirm or deny the existence of the information requested."

5. On 8 July 2021 LBH responded and cited section 14. Following an internal review LBH wrote to the complainant on 24 August 2021 upholding its application of section 14.

Reasons for decision

6. The Commissioner has previously issued four decision notices relating to the matter of parking management and road traffic orders, which have, at some point, involved the same complainant. A summary of these notices is contained in an annex at the end of this decision notice.
7. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
8. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal (Information Rights) considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield¹ (GIA/3037/2011). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure."
9. The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious
10. Having reviewed all the information available to him and considered the history and context of this request, the Commissioner considers LBH is entitled to rely on section 14 to refuse to comply with the request.

11. It appears to the Commissioner that the complainant has adopted an intransigent position.
12. The Commissioner notes that the root of this case goes back to 2018 and a relatively minor issue of a change in wording to parking management orders. By continuing to make requests for broadly similar information is, in the Commissioner's view, an abuse of process and the value of the request is negligible at best.
13. Furthermore, the resources LBH has already devoted to dealing with this trivial, historical matter are already grossly disproportionate to anything that could be achieved by answering this or any similar request.

Other matters

14. The Commissioner acknowledges that LBH has not always responded to requests in the manner that he would expect and he recommends that it refers to the guidance available on his website¹ to assist in dealing with requests for information.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

Right of appeal

15. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex – Previous requests

Case reference: **FS50803416 and FS50803417**

<https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615982/fs50803416-and-fs50803417.pdf>

On 2 October 2018, an individual acting on behalf of the complainant requested information of the following description: "For the period between January 1998 to March 2017 Hillingdon Council used the standard term of "intends to make" in relation to Road Traffic Orders in over 620 legally required notices. These notices were all published in the 1501 section of the London Gazette and should reflect the on street notices put up in that period as well as reflecting the orders citing the relative act and sections that are eventually made relating to those notices.

From April 2017 more than 40 notices by the London Borough of Hillingdon have been published in the same 1501 section omitting the phrase "intends to make" and instead substituted it with the term "proposes to make". As this is clearly a required legal term, the change indicates a change of internal policy affecting these notices as no legislation changes have been made requiring the use of this term regarding proposal notices since 1996.

Therefore I would ask for the following information under the freedom of information act. 1. Which member or members of the executive and or political leadership made the decision to change the standard term from "Intends to make" to "Proposes to make".

As this is a significant change it would require a meeting that should include the input of at least the relative cabinet member, deputy CEO whose named on those notices and Head of Legal/Borough Solicitor who is ultimately responsible for legal compliance. Did any such meeting take place and who attended. Please supply the minutes.

If no policy meeting took place, there would have been internal consultation regarding this significant policy change, please supply the relative internal communications and or minutes of the associated meetings relating to this policy change."

On 3 October 2018, the individual acting on behalf of the complainant added the following to the request:

"I should ask one more question to be added to this request which is most important. Why was the term "Intends to make" in the 1501 notices changed to "Proposes to make".

The following does need to be taken into account. The Borough Solicitors and

Deputy CEO's written affirmation that the term was legally acceptable and compliant PRIOR TO that significant change and backed up by the Council Leader [named individual 1] in writing with the statement 'For the avoidance of doubt I have absolute faith in the professional ability of both [named individual 2] the Deputy Chief Executive and [named individual 3] the Borough Solicitor''

On 21 December 2018, the Council responded following the Commissioner's intervention in respect of the delay. It refused to provide a response on the grounds that, in its view, the request was vexatious (FOIA section 14). It directed the individual to the Commissioner if he wished to complain about this.

Request set 2

On 5 October 2018, the aforementioned individual requested information of the following description:

"What is the procedure for official combined complaint against the Deputy CEO, Borough Solicitor and Council Leader under the following circumstances. For negligence and failure of duty and or failing to declare a conflict of interest in the handling a complaint to which they were the ultimate responsible subjects compounded by joint supported misleading actions with misleading statements made to a resident and registered elector's representative in relation the compliance of official legally required public notices published in the London Gazette for a period of no less than 20 years. The negligence and misleading actions became evident after those cited made unambiguous statements in February 2017 to early March 2017 that the process and notices were fully complaint.

Furthermore it is noted that the Deputy CEO's name is attached to notices with a significant change of wording in subsequent published notices that was made and has been in constant use since April 2017. This small but legally significant change was in contradiction of those previous statements in that the term "Intends to make" being no longer used and replaced with the standard use by all other local authorities of "Proposes to make" despite no recent change in legislation or directives warranting that change indicating that the previous term used was indeed erroneous and voiding said notices using that term prior to April 2017.

The fact that the majority of notices still fail to cite the relative 1984 act or appropriate acts and sections while a significant minority do compounds the lack of legitimacy of those erroneous notices as does the aforementioned action in changing the wording policy. These actions were not in the interest of the Borough, Residents and or the Electorate.

I can go into further details but this makes the point and gives a good basis

for the procedure to deal with such a complaint The following has to be taken into consideration prior to response. The LG Ombudsman only acts if there is a direct out of pocket issue to the resident or it is to do with social care. As there is no direct financial loss incurred at this stage, pursuance through the LG Ombudsman is negated at this stage.

That other local authorities have a procedure in place for complaints against the Borough Solicitor in which they are referred to another Borough's Solicitor for action, otherwise an independent chair of the standards committee can be appointed in order to review the complaint."

IC-126726-N8T3

<https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021236/ic-126726-n8t3.pdf>

On 2 October 2018, the complainant's father wrote to LBH and requested the information as detailed above.

A decision notice was issued on 18 November 2019 under case references FS50803416 and FS50803417 which was subsequently appealed (EA/2019/0411) with the Information Tribunal substituting the Commissioner's decision notices on 22 December 2021. It ordered that a fresh response be issued without reliance on section 14.

LBH provided a response on 25 February 2022 in which it confirmed a 'briefing note' was held but refused to provide it citing section 42 FOIA as its basis for doing so. The decision notice in this case therefore relates to the new response and the application of section 42.

At some point in the proceedings the complainant took responsibility for the appeal to the Information Tribunal and subsequent dealings with LBH and the Commissioner from his father. The complainant has subsequently made a request to LBH relating to similar information which will be dealt with in a separate decision notice in due course.

Due to the overlapping timescales of requests and appeals, along with delays in progressing complaints and Tribunal cases due to the pandemic, some of the correspondence to the Commissioner related to both cases. Consequently, the Commissioner has identified the salient points to be included in this decision notice.

The complainant first contacted the Commissioner on 18 January 2022 to advise that another complaint was pending with regard to an information request for similar information, to which LBH had also applied section 14.

IC-123437-S5Y0

<https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021525/ic-123437-s5y0.pdf>

On 17 May 2021 an individual made the following request for information under the FOIA:

"Would you kindly supply the following information under the freedom of information act I am having a great deal of difficulty locating defined notices of proposal to make road traffic orders for parking schemes/parking management prior to April 2017 in the London Gazette.

It is clear there was a change of policy on the format of notices from that which existed up until end March 2017 and that used from April 2017 onward. With this in mind would you kindly provide the policy of publishing parking management notices, including proposal notices from prior to March 2017.

In the absence of such policy documents, would you kindly supply the documentation regarding the change of notification and publication policy leading to the changes from April 2017 onwards."

LBH responded on 15 June 2021 and stated: "There have been no changes to the Council policy in regards to the publication of permanent traffic orders during the specified period with exception to recent amendments in line with The Traffic Orders Procedure (Coronavirus) (Amendment) (England) Regulations 2020."

On 16 June 2021 the complainant wrote to LBH again stating: "Your response appears to apply the notices of making, a different matter, not relating to notices of proposal, which is the information being sort [sic]. I know that these things can sometimes be confusing but they are a 2 stage process (stage 1 proposal notices for orders and stage 2 notices of making these orders) and I am trying to find out information on stage 1 which I cannot find in the public domain.

The request also contained the following which was unfortunately overlooked as a result of that confusion " In the absence of such policy documents, would you kindly supply the documentation regarding the change of notification and publication policy leading to the changes from April 2017 onwards" Would you please clarify on if you have the documentation or not.

Following an internal review, LBH maintained its position. The complainant wrote to LBH again on 4 August 2021 repeating their request and further stated: "The request remains unfulfilled because you have not confirmed if the documents requested exist or not and this was not addressed in your internal review. So for the avoidance of raising this issue with the ICO and

for the avoidance of further misunderstandings on this request, would you kindly confirm that no documentation relating to this obvious change in public notices in fact exists in any shape or form. It's a straightforward question."

At some point, the complainant took over the complaint from the original requestor.

IC-183900-S0B1 – decision notice issued 25 October 2022

On 7 May 2021 the complainant made the following request for information:

"Please could you provide the following information under the FOIA in relation to parking management schemes:

1. Your policy of publication of proposal and making order public notices
2. The publications which the notices are published
3. The number of notices published in the past 12 months in each publication
4. The cost of public notice publications and placing on the street for the last 12 months"

Part 1 was dealt with in decision notice reference IC-123437-S5Y0².

LBH responded on 15 June 2021 and provided the following information:

Part 2 - London Gazette and Uxbridge Gazette.

Part 3 - Period 19th May 2020 and 19th May 2021:

42 in the London Gazette for the purpose of permanent traffic order intent and making.

42 in the Uxbridge Gazette newspaper for the purpose of permanent traffic order intent and making.

With regard to part 4 of the request it stated:

"We decline to provide a response pursuant to section 12 of the Freedom of Information Act 2000 as it would take more than 18 hours to break down the

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021525/ic-123437-s5y0.pdf>

cost of each notice as in order to answer the enquiry. There is officer's time to factor in, the cost of car mileage between multiple sites, the cost of laminating each notice and the cost of cable ties etc. which is not easily collated or even possible to calculate.

In its internal review of 12 July 2021 LBH maintained its position.